

U.S. Serial No. 10/614,520
Page 8 of 13

REMARKS

Reconsideration of the above-identified application in view of the present amendment is hereby requested.

The specification has been amended at page 9, line 29 to correct the informality kindly noted by the Examiner. The upper guide tube is item "70" rather than 78. A global search of the specification found no other use of the number 78.

The Examiner has also objected to the reference to the cam surface 99 on page 88, but that number seems correct.

The cams actually each include two cam surfaces, namely the major longer surface 98 and the upper angled surface 99, which extends off at a different angle. The upper angled portion is shown at 99 in Figure 8 and also in Figure 4. Vertical movement engages the roller 92 on the gate and swings the gate about the pivot 85 the slightly more than 180° shown. The roller will engage both surfaces in succession.

The objection to the drawing is a puzzlement especially in view of Figure 5 where the spring of the gate hinge is most clearly shown at 108. A further illustration of the spring of the hinge would be redundant. An explanation of this objection would seem in order.

Certain claims have been amended to correct some of the informalities noted, but not as a result of the two totally inappropriately applied references.

It is noted that claim 3 has been amended to overcome the objection, but that either one word or two for "an other" is acceptable English. Also, claims 1 and 2 have been amended to correct the antecedent problem noted by the Examiner.

U.S. Serial No. 10/614,520
Page 9 of 13

Turning now to the claim rejections the Examiner has rejected all claims as indefinite under 35 U.S.C. §112 and complains of the means plus function limitation and indicates the claim covers every conceivable manner of accomplishing this function. The Examiner cites no other authority, but this position ignores paragraph 6 of the authority cited, namely §112 of Title 35.

The Examiner should be aware that a "means plus function" clause shall be construed to cover corresponding structure, material, or acts described in the specification and equivalents thereof (35 U.S.C. §112, paragraph 6). The Federal Circuit has emphasized that this statutory requirement clearly applies to claim interpretation in patentability determinations in the Patent and Trademark Office. *In re Donaldson Inc.* 29 USPQ 2nd 1845, 1848, 1849 (CAFC 1994).

Characterized another way, the Examiner is in reality rejecting applicants claims as too broad, but this is determined by the prior art. As set forth below, the art has nothing to do with Mezzanine Safety Gates, or Applicants claims.

Claim 1 and all of applicants claims are submitted as in compliance with 35 U.S.C. §112.

The Examiner has rejected claims 1-4 and 11-14 as anticipated by U.S. patent 4,073,382 for a steel racking hoist to Fahey et al. The only elements the Examiner mentions are 132 and 134. One is called a counterweight by the Examiner while the other a hinge.

The entire description of the two elements of the reference is found at the first full paragraph at the top of column 7. The word "counterweight" isn't used by Fahey et al., although the specification elsewhere does describe the counterweight (64) for the elevating cage. But then this has nothing to do with the locking or unlocking or opening of Fahey's gate or a mezzanine gate.

U.S. Serial No. 10/614,520
Page 10 of 13

What the Examiner refers to as a counterweight is simply a weight actuated pivoting dog that locks the gate as the operator's platform leaves the floor, and unlocks the gate as the platform returns to the floor.

But what has this to do with applicants invention or applicants claim limitations? The answer is nothing.

An anticipation requires that the prior art reference must either expressly or inherently disclose each and every limitation in a claim. *Verdegaal Bros. v. Union Oil Co.*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); *In re Paulsen*, 31 USPQ 2d 1671, 1673 (Fed. Cir. 1994). The reference must also be enabling such that it puts the invention in the hands of one skilled in the art. *In re Sun*, 31 USPQ 2d 1451, 1453 (Fed. Cir. 1993) (unpub.); *In re Spada*, 15 USPQ 2d 1655, 1657 (Fed. Cir. 1991). Not only is all of the structure required, but also each statement of function. *In re Weiss*, 26 USPQ 2d 1885, 1888 (Fed. Cir. 1993), which cites two CCPA cases to this effect:

The limitations which must be met by an anticipatory reference are those set forth in each statement of function. *RCA*, 730 F.2d at 1445 N.5, 221 USPQ at 389 n.5 (citing *In re Mott*, 557 F.2d 266, 194 USPQ 305, 307 (CCPA 1977)).

The Examiner is also invited to review Section 2131 of MPEP, entitled "ANTICIPATION—APPLICATION OF 35 U.S.C. 102(a), (b) and (e)."

Turning now to the allegedly anticipated claims, Fahey doesn't show a mezzanine, or a mezzanine safety gate including posts adapted to be mounted at the edge of the mezzanine, or a gate between the posts normally closed and locked. Also, this reference doesn't show a safety railing cage mounted on the gate posts for vertical movement, nor does it show the movement of the railing cage unlocking the gate. In the reference there is no gate between posts on a mezzanine, nor is there any vertical movement of a railing cage on gate posts to

U.S. Serial No. 10/614,520
Page 11 of 13

unlock a mezzanine gate. There is no relative vertical movement between a railing on the one hand and gate posts on the other.

The same exercise can be repeated for claims 2, 3 and 4 as well as claims 11-14. For example, where in the reference is there any means to open the gate in response to vertical movement? Once unlocked, in the reference the operator opens it or climbs over. Where is there any means to shut the gate (claim 3) or where is a guide tube for a counterweight (claim 4). The pivoting dog or lever of Fahey et al wouldn't work too well (at all) in a guide tube.

Claims 1-4 and 11-14 are not anticipated by Fahey et al.

The Examiner has rejected all the remaining claims as obvious over Fahey et al. in view of Murphy et al., U.S. Patent 3,918,755, indicating it would be obvious to provide the gate of Fahey with the hinge of Murphy "...in order to have a gate that offers low resistance to close."

A reading of Fahey does not reveal that Fahey ever mentions a problem of a gate having too much resistance to close. That being the case, one can only ask why the combination? The why is certainly nothing contained in the references. Murphy is totally unrelated to Fahey as well as applicants claims.

The Murphy reference relates to the overhead compartment doors in an aircraft cabin as seen in Figure 1 and the spring-cam construction is designed to hold the door open (so it won't fall down) or hold the door closed so it will resist opening even if unlocked. Anybody who has flown and used such compartments is familiar with how they operate. But what does that have to do with applicants claimed invention or the principal reference? The answer again is nothing.

U.S. Serial No. 10/614,520
Page 12 of 13

Both references are not analogous either to each other or to applicants invention.

For resolution of obviousness under 35 U.S.C. 103, the law presumes full knowledge by the hypothetical worker having ordinary skill in the art of all the prior art in the inventor's field of endeavor. With regard to prior art outside the inventor's field of endeavor, knowledge is presumed only as to those arts reasonably pertinent to the particular problem with which the inventor was involved. See *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992), *In re Wood*, 559 F.2d 1032, 202 USPQ 171 (CCPA 1979), *In re Antle*, 444 F.2d 1168, 170 USPQ 285 (CCPA 1971). Following *Clay* and *Wood*, the determination that a reference is from a nonanalogous art is two fold. First, it must be decided if the reference is from within the inventor's field of endeavor. If it is not, then it must be determined whether the reference is reasonably pertinent to the particular problem involved. Here manually operated overhead aircraft cabin are relevant to no problem solved by applicant, and also to no make believe or "straw" problem in *Fahey*.

The above authorities and the "field of endeavor" test were recently confirmed by the Federal Circuit in *In re Bigio*, 72 USPQ 2nd 1209 (CAFC August 1904). Here, neither reference shows applicants invention nor are they from applicants field of endeavor.

One confronted with the problems of mezzanine loading area safety and OSHA compliance wouldn't look to either of the two different fields of the applied references. The Examiner is invited to read the "Background" portion of this application again.

U.S. Serial No. 10/614,520
Page 13 of 13

A review of the art cited but not applied by the Examiner reveals that much of that art is clearly outside applicant's field of endeavor. While applicant appreciates a thorough search it seems the art cited is from twelve (12) different classes, ranging far afield from mezzanine safety gates. None seem relevant to applicant's claims. The classification confirms that the art is not analogous.

In view of the foregoing all of applicants claims are submitted as allowable and early action to that effect is solicited.

Should any deficiencies or overpayments occur in the filing fees of the subject amendment, authorization is hereby given to charge Deposit Account Number 18-0988.

Respectfully submitted,
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